

# AB 1338 (Koretz)

Co-authors: Assemblymembers Aroner, Cedillo, Chan, Firebaugh, Goldberg, Kehoe, Longville, Migden, Oropeza, Romero, Shelley, Strom-Martin, Wesson and Senator Kuehl

## The California Family Protection Act of 2001

(as amended 3/29/01)

### FACT SHEET

#### PURPOSE

AB 1338 will provide equal legal recognition for same sex couples in California who are not allowed to marry.

Civil union is a new legal concept that would entail legal protections for same-sex couples only, under state law. It is distinct from "traditional" conceptions of marriage, including most conservative religious traditions of marriage. The civil union concept is designed to provide a similar package of legal protections for gay and lesbian couples under state law, as heterosexual couples may obtain by marrying. The bill is written to create substantially equivalent legal responsibilities and security for same-sex couples, but only with respect to California law.

Establishing and respecting civil unions, and providing the rights, protections, benefits and responsibilities of being spouses in a civil union would further California's interest in encouraging close and caring families and promoting stable and lasting family relationships. The availability of a civil union will protect family members from economic and social consequences of abandonment, divorce, the death of loved ones, and other life crises.

The equivalent legal recognition of a civil union will protect these couples, the children they are raising, third parties, and the state against numerous harms and costs; would reduce discrimination on the bases of sex and sexual orientation; and would provide such couples the opportunity to obtain rights, protections, benefits and responsibilities currently afforded

only to different-sex couples by California's civil marriage laws.

#### SUMMARY

AB 1338 will establish the choice for same sex couples in California to enter into a civil union, similar to the law recently passed in Vermont.

**What is a Civil Union?** A civil union is a comprehensive legal status parallel to civil marriage for all purposes under state law. The process to enter into a civil union parallels state law on entering into a civil marriage. Spouses in a civil union will enjoy the same state law protections and responsibilities as are available to spouses in a marriage. All legal rights which apply to "family," "immediate family," "dependent," and "next of kin" also apply to spouses in a civil union.

Couples in a civil union, regardless of their sex or sexual orientation, will have the opportunity to obtain all of the same rights, protections, benefits and responsibilities afforded different sex couples by California's marriage laws. This will include laws relating to:

- rights and obligations of support during and after the relationship and community property;
- child custody and visitation and stepparent adoption;
- title, probate, administration of estates, acquisition, ownership or transfer of real or personal property
- government benefits, including but not limited to workers' compensation, unemployment insurance,
- taxes, including but not limited to joint

filing of income taxes, marital tax rates, marital tax exemptions

- health insurance coverage for spouses, family care and medical leave, bereavement leave, and coverage of spouses under medical, dental, life and disability insurance;
- laws relating to legal claims related to or dependent upon spousal status, including but not limited to claims for wrongful death, intentional or negligent infliction of emotional distress, loss of consortium, and victim's compensation rights;
- hospital visitation, medical consent, conservatorship, guardianship, anatomical gifts, disposition of remains, and rights of burial in family cemeteries.

To enter into a civil union, a couple will be required to apply for a civil union license and shall obtain a certificate of registry of civil union from their county clerk.

## FACTS

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According to analyses of U.S. Census data, approximately 400,000 same-sex couples reside in California, many of whom are raising children together. Without these legal rights, protections, benefits and responsibilities, these families suffer numerous obstacles and hardships, which directly harms them, and leads to numerous harms and costs to third parties and to the state.

Same sex relationships are now recognized in California state law, which provides for a domestic partner registry with public benefits to the same-sex domestic partners of state employees, in the ordinances and policies of many California cities and counties, and in the benefit policies of many private businesses.

The traditional family in this country is changing. According to a recent University of Chicago study, only 26 percent of U.S. households were made up of married couples with children in 1998, compared with 45 percent in the early 1970s. Most of the drop is attributed to a growth in divorces, common-law relationships and single people. But the U.S. Census Bureau estimates that in 1998 there

were 405,000 same-sex couples in California, mostly in large urban areas.

**Proposition 22 and Civil Unions.** The Family Protection Act does not pertain to or affect marriage in any way or the parties who may marry under California law and therefore does not violate the spirit of Proposition 22.

Proposition 22 does not affect civil unions: it simply restricted the definition of the word "marriage" in California law. Proponents of the measure were very clear that they did NOT intend to authorize any form of discrimination, restrict laws that protect same-gender couples, or prevent further laws that did not alter the definition of marriage.

The Knight Initiative was about whether California would have to recognize and treat as valid same-sex marriages that might at some point be legalized in other states. The Family Protection Act of 2001 is about something altogether different: not whether California should recognize same sex marriages entered in other states, but whether California will allow same sex couples to enter civil unions (rather than marriages) in this state.

**Vermont.** Over a year ago Vermont lawmakers crafted their civil union statute, a response to the state Supreme Court's ruling in *Baker vs. State of Vermont* that gay and lesbian couples were being unconstitutionally denied the rights, benefits and responsibilities of marriage.

Vermont offers nearly the same spousal rights to same-sex couples as they do to opposite-sex couples who are legally married. These became effective July 1, 2000 except for provisions relating to insurance and taxes that become effective in 2001. The new status offers a vastly improved range of protections for same-sex couples who live in Vermont never before available in the United States.

In spite of there being no benefits to non-Vermont residents, over 1,500 same-sex couples from more than 40 states and several nations have gone to Vermont to be registered. As of December 29, 2000, a total of 1,527 civil unions

were certified, registered, and filed with Office of Vital Statistics. Male unions represent 35% of the civil unions (535), and female unions represent 65% (992). Of the 3054 parties to a civil union, 22% (673) are Vermont residents. The other 78% (2381) are from other states, Washington, D.C. and other countries. After Vermont, the largest number of parties to a civil union are residents of New York, Massachusetts and California. Non-U.S. residents hailed from Canada, England, Venezuela, Mexico, Philippines, Australia, Netherlands, Germany, India, and Guatemala.

In Vermont, civil unions played a dominant role in the November election, when voters shifted control of the House to the Republicans and eroded the Democratic majority in the Senate. However, more than 60 percent of voters in the gubernatorial race supported the Governor who signed the civil union bill.

This year, a Republican legislator from has sponsored a bill that would repeal the law and void the more than 1,500 civil unions between gay and lesbian couples registered in Vermont since last July.

The California Family Protection Act was modeled closely on the Vermont law and is, indeed, very similar. Its differences come mainly from the ways in which California's Family Code and other laws pertaining to couples and families differ from Vermont law.

**Hawaii.** It is likely that Hawaii will consider a civil-unions like bill this year. Hawaii already has the second most comprehensive package of benefits in the US next to Vermont. It is called the Reciprocal Beneficiaries Law, passed in 1997, and bestows over 70 rights and responsibilities to same-sex couples. This law was an effort by Hawaii legislators to circumvent providing full, legal marriage for all citizens. It was a reaction to the then ongoing suit for legal marriage.

The legislators hoped Act 383 would persuade the court that Hawaii no longer discriminated against same-sex partners, thereby eliminating the need to order the State to offer legal marriage. The Reciprocal Beneficiaries law

allows any two single adults, including same-sex partners, blood relatives or just friends, to have access to less than 60 spousal rights on the state level, and none on the federal level.

**Other States and Countries.** State legislators are crafting proposals to create same-sex benefits in New York, Connecticut and Rhode Island. State Representative Tom Duane, a Democrat from Manhattan, said he is considering a bill that would mirror Vermont's. Rhode Island State Representative Michael Pisaturo's bill would go further and expand marriage to gays and lesbians. Canada and Mexico are also expected to consider civil union legislation soon.

**Polling.** Californians unquestionably support laws that recognize the reality of same-gender couples' relationships. When polled about specific rights and responsibilities, an increasing majority of Californians consistently affirms its support for those rights.

For example, statewide polling conducted by Decision Research after passage of the Knight Initiative showed that while a plurality of Californians (47 percent) favor civil unions, when the question is rephrased as "legal union," a majority emerges. 52 percent of Californians support legal unions for same-gender couples. A nationwide Gallup Poll conducted in January 2000 found that 40 percent of the respondents support a law that would allow gay couples to legally form civil unions, giving them the legal rights and benefits of married couples.

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## COMMENTS

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The California Family Protection Act of 2001 is historic legislation that will provide equal legal recognition for same sex couples in California who are not allowed to marry.

The Family Protection Act is about equality. It is about preserving basic rights. This bill is about protecting and encouraging strong and stable families.

Same sex couples who choose to make a lifetime commitment to each other should be

not discriminated against and should not be deprived of the same rights, protections and benefits that are granted to different sex couples who choose to marry. Same sex couples who choose to make this commitment to each other should also be accountable for the same responsibilities as those who marry.

The bill is in everyone's best interest. The civil union option will encourage close and caring families, promote stable and lasting family relationships, and protect family members from economic and social consequences of abandonment, divorce, the death of loved ones and other life crises.

Assemblyman Koretz is carrying this bill because he strongly believes that same sex couples deserve equal treatment -- legal recognition of their families -- the same legal recognition that he and his wife were granted when they committed our lives to each other.

This bill is about equality. This bill is about preserving basic rights. This bill is about protecting and encouraging strong and stable families. There is no reason why same sex couples who choose to make a lifetime commitment to each other should be discriminated against and deprived of the same rights, protections and benefits that are granted to different sex couples who choose to marry. They also should be accountable for the same responsibilities.

The Family Protection Act of 2001 seeks to give same sex couples another choice -- to provide lesbian and gay couples and their families with fully comparable state law protections, as well as responsibilities, as those available to different sex couples who marry.

This is a matter of helping all families -- keeping them strong and providing a basic level of protection that we all deserve. It is simply a matter of justice.

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## STATUS

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Assembly Judiciary Committee -- 2 Year Bill

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## SUPPORT

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- California Alliance for Pride and Equality
- Ventura County PFLAG
- ACLU
- Lambda Letters Project
- Planned Parenthood Affiliates of CA
- City of West Hollywood
- City and County of Sacramento Human Rights/Fair Housing Commission
- CA Faculty Association
- Congress of CA Seniors
- Friends Committee on Legislation of CA
- CA Church Impact
- National Lawyers Guild, San Francisco Bay Area Chapter
- Chinese for Affirmative Action
- CA National Organization for Women
- CA Nurses Association
- People for the American Way
- San Diego Democratic Club
- CA HIV Advocacy Coalition
- American Medical Women's Association
- Ventura County Rainbow Alliance
- Several individuals

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## OPPOSITION

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- Committee on Moral Concerns
- Capitol Resource Institute
- Campaign for California Families
- Community Church of Vista
- Several individuals

Consultant: Teresa Stark, 319-2042  
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